UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	$ \begin{array}{cccc} 0.7 & \text{CV} & 3.7.7 \\ \text{(Pkc)} \end{array} $
RON REEVES,  Plaintiff,	Civ. Action No. (ECI= CASE)
-against- HEARST CORPORATION and TOURNEAU, INC.	COMPLAINT
Defendants.	MAY 1 4 2007

Plaintiff, by his attorneys, Joel L. Hecker, Esq. of Russo & Burke, as and for his complaint against defendants herein, alleges as follows:

### **JURISDICTION**

1. This action arises under Title 17 of the United States Code, and jurisdiction is vested in this Court under 28 U.S.C. Sec. 1338. Proper venue exists under 28 U.S.C. Sec. 1400(a) in that defendants reside, do business and/or may be found in this district and certain of the transactions complained of occurred in this district. Jurisdiction is vested in the additional counts under the principles of supplemental jurisdiction.

#### THE PARTIES

- 2. Plaintiff is and at all relevant times herein has been a resident of the City, County and State of New York.
- 3. Upon information and belief, defendant Hearst Corporation ("Hearst") is a domestic corporation with principal offices at 300 West 57<sup>th</sup> Street, New York, NY 10019, and is in the publication business.

4. Upon information and belief, defendant, Tourneau, Inc. ("Tourneau") is a domestic corporation with principal offices at 3 East 54th Street, New York, NY 10022, and is engaged in the business of manufacturing and selling watches and other time pieces.

### COUNT I COPYRIGHT INFRINGEMENT (Against all Defendants)

- 5. Plaintiff is and at all relevant times herein has been engaged in the business of creating professional photography for use by his clients.
- 6. In Spring 2006 Hearst retained plaintiff to create photographic images of Tourneau watches which were to be used by Hearst and its client, Tourneau, solely in a Tourneau advertising section for Hearst Publications, to run only in Hearst Print Publications for one month in 2006 (the "Assignment").
- 7. Pursuant thereto, plaintiff caused, among others, 23 original photographic works to be created (the "Copyrighted Photographs"). The Copyrighted Photographs were and are wholly original to plaintiff and are copyrightable subject matter under the copyright laws of the United States.
- 8. Plaintiff, by causing the creation of the Copyrighted Photographs, thereby secured the exclusive rights granted to the author of copyrightable work under the copyright laws of the United States.
- 9. Since the creation of the Copyright Photographs, publication of same by plaintiff or under his authority or license has been in strict conformity with the provisions of the copyright laws.

- 10. Since the creation of the Copyrighted Photographs, plaintiff has been the sole proprietor of all rights, title and interest in and the copyright of said Photographs.
- 11. Prior to the commencement of this action, plaintiff complied in all respects with the United States Copyright Act and all other laws governing copyrights by filing the Copyrighted Photographs with the United States Copyright Office, along with payment of the requisite fees. Plaintiff thereafter obtained registration of the Copyrighted Photographs under Registration No. VA 1-369-654. A copy of such Registration Certificate is annexed hereto as Exhibit "A".
- 12. After completion of the Assignment, Hearst used the Copyrighted Photographs in a Tourneau brochure entitled *Build Your Watch Wardrobe* (the "Advertising Brochure") which was published as a Tourneau advertising section in selected Hearst publications as licensed by plaintiff.
- Advertising Brochure by adding to the back cover of the Advertising Brochure a list of Tourneau stores and addresses and a mailing template, and to the front cover the phrase "As seen in Esquire, Harper's Bazaar, Smartmoney, Town & Country and Veranda" (the "Infringing Brochure").
- 14. The Infringing Brochure, which contained the Copyrighted Photographs, was distributed nationwide and perhaps overseas as well.
- These uses of the Copyrighted Photographs in the Infringing Brochure were without the authorization, knowledge or consent of plaintiff, and contrary to the terms of the license granted to defendants.

- 16. Such uses of the Copyrighted Photographs in the Infringing Brochure continued after plaintiff notified defendants that such use was unauthorized and must be discontinued.
- 17. Defendants knew that such infringing use was not authorized by plaintiff, and that such acts were contrary to the usage rights granted by plaintiff to defendants.
- 18. These uses of the Copyrighted Photographs, without plaintiff's permission, authorization or consent, and contrary to the understanding of the parties, were deliberate infringements of plaintiff's copyright in his work.
- 19. Defendants thus infringed plaintiff's exclusive rights in the copyright to the Copyrighted Photographs, in violation of Sections 106(2) and (5) of the Copyright Act of 1976, 17 U.S.C. Sections 106(2) and (5).

# COUNT II BREACH OF CONTRACT (Against defendant Hearst)

- 20. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 12 herein with the same force and effect as is fully set forth at length hereat.
- 21. In connection with the Assignment, Hearst agreed to pay plaintiff photography fees and expenses aggregating \$77,735.69.
- 22. Pursuant thereto, plaintiff created the required color photography and submitted same to defendants which photography was used in the Advertising Brochure.
- Plaintiff fully and completely performed the services required of him to be performed pursuant to the agreement between the parties.

- 24. Hearst has refused and continues to refuse to pay such fees, or to reimburse plaintiff the expenses incurred by plaintiff on behalf of defendants, except for an initial advance of \$15,000 and a second payment on February 1, 2007 of \$41,070, leaving a balance due of \$20,665.69.
  - 25. Such acts constitute breach of contract by Hearst.
- 26. As a result thereof, plaintiff has been damaged by Hearst in the sum of \$20,665.69, no part of which has been paid although duly demanded.

# COUNT III OUANTUM MERIUT (Against defendant Hearst)

- Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 12 and 21 through 24 herein with the same force and effect as is fully set forth at length hereat.
- 28. Hearst has utilized plaintiff's work, labor and services, for Hearst's business purposes, without paying the fair and reasonable value for such use.
- 29. The fair and reasonable value for the services rendered by plaintiff for Hearst including disbursements advanced is \$77,735.69, of which only \$56,070 has been paid.
- 30. As a result thereof, plaintiff has been damaged by Hearst in the sum of \$20,665.69, no part of which has been paid although duly demanded.

### UNJUST ENRICHMENT (Against defendant Hearst)

- 31. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 12 and 21 through 24 herein with the same force and effect as is fully set forth at length hereat.
- 32. Hearst has been unjustly enriched by the value of the work, labor and services performed by plaintiff and payment of the expenses advanced by plaintiff on Hearst's behalf, and not reimbursed.
- 33. As a result, plaintiff has been damaged by Hearst in the sum of \$20,665.69 no part of which has been paid although duly demanded.

WHEREFORE, plaintiff demands judgment against defendants as follows:

- A. On Count I against defendants, jointly and severally:
- 1) that defendants, their agents, servants, employees, officers, attorneys and all those persons in active concert or participation with each and any of them be enjoined during the pendency of this action and permanently, from directly or indirectly infringing the Copyrights of plaintiff in any manner, and from publishing the infringing material.
- 2) that defendants be required to deliver up to plaintiff to be impounded during the pendency of this action, all material infringing the Copyrighted Photographs, which are in their possession or under their control and to deliver up for destruction any material used in the making or publishing of such infringing material;

for an accounting of the proceeds derived by defendants from the 3) publication of the infringing material and upon such accounting, that defendants pay to plaintiff damages provided by statute for defendants' statutory copyright infringement, and all monies determined to be benefits generated or arising from such infringing material, and the damages which plaintiff has suffered as a result of such infringement; and

4) that defendants pay to plaintiff as and for exemplary damages the sum of \$150,000.

B. On each of Counts II, III, and IV, that defendant Hearst pay to plaintiff the sum of \$20,665.69.

C. On all Counts, that defendants pay to plaintiff all the costs and expenses of this action, including reasonable attorneys' fees to be assessed by the Court, plus interest as appropriate, and such other and further relief as to this Court seems just and proper.

Dated: New York, New York May 10, 2007

#### Russo & Burke

By: /s/ Joel L. Hecker Joel L. Hecker, Esq. (JH 0842) Attorneys for Plaintiff 600 Third Avenue New York, New York 10016 (212) 557-9600



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

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